

EXHIBIT M

Videotaped Deposition of
Todd J. Mullenger
March 13, 2020

Grae
vs.
Corrections Corporation of America, et al.
Confidential



www.aptusCR.com / 866.999.8310

1 IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

4 NIKKI BOLLINGER GRAE, Individually
and Behalf of All Others Similarly
5 Situated,

6 Plaintiff,

vs.

CASE NO.
3:16-CV-02267

8 CORRECTIONS CORPORATION OF
 AMERICA, et al.,

Defendants.

10

11

12

CONFIDENTIAL

13

14

15

16

17

18

19

30

31

22

22

24

25

Reported by:

23 | Elisabeth A. Miller Lorenz

24 RMR, CRR, LCR No. 66

25 Job No.: 10066906

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. We're
3 now on the record. Today's date is March 13th,
4 2020, and the time is approximately 9:35 a.m.

5 This is the video deposition of
6 Todd Mullenger being taken in the matter of Grae
7 versus CCA; on behalf of the plaintiff; pending in
8 the United States District Court for the Middle
9 District of Tennessee; Case No. 3:16-CV-02267. We
10 are here at Riley Warnock at 1906 West End Avenue in
11 Nashville, Tennessee.

12 My name is David Drumel of Aptus Court
13 Reporting. The court reporter is Elisabeth Lorenz.

14 Counsel, please identify yourselves for
15 the record at this time.

16 MR. LYONS: Christopher Lyons, Robbins
17 Geller Rudman & Dowd, on behalf of the plaintiff and
18 the class.

19 MR. WOOD: Christopher Wood on behalf
20 of the plaintiffs and the class.

21 MR. WHITWORTH: Morgan Whitworth of
22 Latham & Watkins on behalf of defendants and the
23 witness.

24 MR. McGEE: Trey McGee, Riley,
25 Warnock & Jacobson, on behalf of the -- the

1 defendants.

2 THE VIDEOGRAPHER: Thank you.

3 Will the court reporter please swear in
4 the witness.

5 * * *

6 TODD MULLENGER

7 was called as a witness, and after having been first
8 duly sworn, testified as follows:

9 E X A M I N A T I O N

10 BY MR. LYONS:

11 Q Good morning, Mr. Mullenger.

12 A Good morning.

13 Q Have you ever had your deposition taken
14 before?

15 A Yes, once many years ago.

16 Q Do you remember what case that was in
17 connection with?

18 A I do not.

19 Q Do you remember generally what type of case
20 it was?

21 A I do not.

22 Q Were you -- were you a party in whatever
23 litigation?

24 A I don't believe so.

25 Q Did it have to do with a work matter or a

1 A I believe it was --

2 (Cellular phone interruption.)

3 THE WITNESS: I'm sorry, I'm sorry, so
4 sorry, my apologies.

5 I believe it was our general counsel.

6 BY MR. LYONS:

7 Q **And would he -- would he go around the room**
8 to various departments to get information?

9 A Yes. Everyone -- he went around the room to
10 every individual in the meeting.

11 Q **And -- and what would -- would he ask**
12 each -- everyone in the meeting questions or...

13 A It was typically, as I recall, a reminder to
14 everyone of the types of information we were looking
15 for, and then he'd go around to every individual and
16 ask them if they were aware of any information that
17 met those guidelines he provided.

18 Q **So any information that met those**
19 guidelines, so it was not in the filings; is that
20 right?

21 MR. WHITWORTH: Object to the form.

22 THE WITNESS: Yeah. So as I recall,
23 everyone was provided a copy of the 10-K in advance,
24 asked to read it, and then were asked if there was
25 any information that wasn't included or any new

1 information that had come to light since the draft
2 of that document.

3 BY MR. LYONS:

4 Q So in connection, for example, with the 2011
5 10-K, is there anything else you would have reviewed
6 other than the Draft 10-K itself?

7 A In -- in preparation of the 10-K?

8 Q Yes.

9 A Internal financial statements, forecast that
10 was prepared. Those come to mind.

11 Q And what -- what was the forecast that you
12 would look at in connection with the 10-K
13 preparation meetings?

14 A Well, I guess actually I'd use the forecast
15 more for the earnings call in our earnings release
16 where we gave guidance is where I'd primarily use
17 that document.

18 Q So you'd look at -- you'd look at -- you'd
19 have an internal forecast that you looked at that
20 then you used to decide what guidance you would
21 issue when you would --

22 A Yes.

23 Q -- issued your earnings release and had an
24 earnings call; is that right?

25 A Yes.

1 Q And so would that -- were your disclosure
2 committee meetings normally before the earnings
3 release went out?

4 A I don't recall.

5 Q Is there anything else that comes to mind
6 that -- sources of information that you would review
7 before -- or in connection with the preparation of a
8 10-K?

9 A Not that I recall.

10 Q And so it sounds like every department would
11 provide information in connection with the
12 disclosure committee meetings; is that right?

13 A They would have the opportunity to provide
14 information.

15 Q Was there anything else that you did to get
16 information from -- from other departments outside
17 of the disclosure committee for inclusion in the
18 10-K?

19 MR. WHITWORTH: Object to form.

20 THE WITNESS: It could come from
21 conversations I or my staff had with other
22 departments.

23 BY MR. LYONS:

24 Q So just sort of an on -- ongoing basis
25 conversations?

1 periodic meetings.

2 Are there -- were there other periodic
3 meetings that I'm missing other than meetings with
4 your staff and meetings with the disclosure
5 committee?

6 A Focused around the disclosure committee?

7 Q Focused around the review and preparation of
8 a 10-K.

9 A Meetings? Scheduled meetings? No, not that
10 I recall.

11 Q Anything else that you would do, other than
12 your participation in those meetings and the review
13 of the things we talked about to get information for
14 inclusion in the 10-K?

15 A Not that I recall.

16 Q So if you were to turn to Page 17 in the
17 exhibit in front of you, heading Business Strategy.

18 A Uh-huh.

19 Q Who would be responsible for this section?

20 MR. WHITWORTH: Object to form.

21 THE WITNESS: This would have been
22 prepared -- drafted by Dave and his team based on
23 input from members of management.

24 BY MR. LYONS:

25 Q Did you have input on it?

1 A Based on my review, I would have had input,
2 yes.

3 Q Based on your review, do you mean at the
4 time you would have reviewed it and had input on it?

5 A I would have had the opportunity to propose
6 changes or modifications.

7 Q You referred to input from members of
8 management.

9 Who -- who all are you including in that?

10 A Anyone who -- who read the document.

11 Q So, for example --

12 A Would have -- would have the opportunity.

13 Would have the opportunity.

14 Q So, for example, looking at the first
15 sentence under the heading there, it says, Our
16 primary business strategy is to provide quality
17 corrections services, offer a compelling value, and
18 increase occupancy and revenue while maintaining our
19 position as the leading owner, operator, and manager
20 of privatized correctional and detention facilities.

21 So what would you do to confirm that that
22 statement was true?

23 A Well, that was our stated strategy as a
24 company.

25 Q So who had input on -- on that statement of

1 **strategy?**

2 A CEO would be the primary. CEO, myself. And
3 it was kind of our mission statement.

4 Q **Would you -- would you periodically review**
5 **that to make sure it was still accurate?**

6 A Yes.

7 Q **Turning to Page 28 in the document.**

8 A Yes.

9 Q **Do you see where it says, We depend on a**
10 **limited number of governmental customers for a**
11 **significant portion of our revenues, near --**

12 A Yes.

13 Q **-- the top of the page.**

14 **And it says, second sentence, The loss of or**
15 **significant decrease in business from the BOP, ICE,**
16 **USMS, or various state agencies could seriously harm**
17 **our financial condition and results of operations.**

18 **Did you talk to specific people about these**
19 **customers in connection with the preparation of the**
20 **10-K?**

21 MR. WHITWORTH: Object to form.

22 THE WITNESS: Sir, what -- what
23 statement are you --

24 BY MR. LYONS:

25 Q **So -- well, there's a list here of a limited**

1 **number of government customers, which includes the**
2 **BOP, ICE, USMS, and various state agencies.**

3 **Was -- did you speak to people who had**
4 **specific responsibilities for those customers in**
5 **connection with the preparation of the 10-K?**

6 A Yes.

7 Q **When and how?**

8 A As a normal course of business.

9 Q **Would they have a role on the -- in the**
10 **disclosure committee meetings?**

11 A Yes, there would be members there.

12 And if I could kind of amend my earlier
13 statement, on that first page you were referring to,
14 was that 17?

15 Q **Yeah, 17.**

16 A That -- that was really the -- that was the
17 primary responsibility of senior management, not
18 anyone on the disclosure committee, anyone who read
19 the 10-K. That was really the primary
20 responsibility of senior management, CEO, CFO, CCO.

21 Q **Understood.**

22 **Is the same true for -- for this discussion**
23 **on Page 28, or would that be a broader group of**
24 **people who would have responsibility?**

25 MR. WHITWORTH: Object to form.

1 BY MR. LYONS:

2 Q And feel free to look at the whole paragraph
3 at least.

4 A So that -- is that that first full paragraph
5 on the page?

6 Q Yes.

7 MR. WHITWORTH: Are you asking him
8 about the whole paragraph or just the statement that
9 you had him read?

10 BY MR. LYONS:

11 Q Start -- starting with the -- with the
12 sentence -- with the statement that we read, but I
13 didn't know if reading the rest of the paragraph
14 would help with context on who was involved in -- in
15 this -- in preparation of this statement.

16 A Yeah, that would have been primarily senior
17 management. I mean, everyone was generally aware of
18 the impact to the BOP, ICE, and marshals on our
19 business and our revenues.

20 Q And so then when you're -- well, first, I
21 guess, did you -- you agreed, I assume, that the
22 company derived and expected to continue to derive a
23 significant portion of its revenues from a limited
24 number of agencies?

25 A Yes.

1 Q And so what did you do to -- to analyze
2 whether it was right to continue to expect to derive
3 a significant portion of revenues from those
4 agencies?

5 MR. WHITWORTH: Object to form.

6 THE WITNESS: Conversations with the
7 subject matter experts.

8 BY MR. LYONS:

9 Q Who were those subject matter experts?

10 A It would be members in our contracting
11 partnership development organization as well as our
12 operations organization.

13 Q And so for the BOP, do you remember who
14 those individuals would be?

15 A On the partnership development, Tony Grande,
16 Bart VerHulst come to mind. On -- on operations,
17 Rick Seiter, who was CCO -- I forget when he
18 transitioned out, and -- and Harley Lappin.

19 Q Harley Lappin was CCO after Mr. --

20 A Yes.

21 Q -- Seiter?

22 A Yes.

23 Q And so you -- I guess you said that -- we
24 just talked about a list of people -- the subject
25 matter experts who had input on the discussion of

1 these customers.

2 Just to confirm, was that -- was that input
3 in the disclosure committee meetings?

4 MR. WHITWORTH: Object to form.

5 THE WITNESS: That could be in the
6 disclosure committee meetings; it could be outside
7 of the disclosure committee meetings.

8 BY MR. LYONS:

9 Q Looking at the next page, Paragraph --
10 Page 29, the paragraph in the middle beginning, In
11 addition, the services we provide?

12 A Uh-huh.

13 Q About halfway down, it says, Our inability
14 to hire sufficient qualified personnel on a timely
15 basis or the loss of significant numbers of
16 personnel at existing facilities could adversely
17 accept our business -- affect our business and
18 operations.

19 Under many of our management contracts, we
20 are subject to financial penalties for insufficient
21 staffing.

22 Who would you talk to about this portion of
23 the document?

24 A Subject matter experts, so members in human
25 resources and the operations department.

1 Q And the operations department, would those
2 be the same people you just spoke about or who would
3 those be?

4 A That could be Harley Lappin and members of
5 his staff -- members of his staff.

6 Q And then who would the human resources
7 subject matter experts be?

8 A That would be the director of HR and one or
9 more of his or her assistants.

10 Q Who was the director of HR at the time?

11 A Brian Collins, I believe at this time.

12 Q And so the -- the last sentence there refers
13 to financial penalties for insufficient staffing.

14 What determined whether and how specific
15 financial penalties for insufficient staffing would
16 be disclosed?

17 MR. WHITWORTH: Object to the form.

18 THE WITNESS: Where would it be
19 disclosed, in the -- in the 10-K?

20 BY MR. LYONS:

21 Q Yes.

22 A Discussions with internal and external
23 counsel.

24 Q Were there other ways that those penalties
25 would be disclosed --

1 Q Or I guess not be on that line, the absence
2 of it would be --

3 A Yes.

4 Q If you wanted to go back and figure out
5 which of those places that these things -- financial
6 penalties showed up on the income statement, how
7 would you do that?

8 A I'm sorry, in the 10-K?

9 Q Yes, yeah -- well, or, I mean, even just
10 looking -- say -- if you put yourself back in
11 your -- your time that you had access to whatever
12 you wanted access to, where would you look or who
13 would you talk to to figure out where the penalties
14 show up on the income statement?

15 A I'm sorry, on this income statement?

16 Q Yes.

17 A Who would I talk to to find out --

18 Q Who would --

19 A Dave Garfinkle.

20 Q If you could turn to Page 49 in the
21 document.

22 A 49?

23 Q Yes.

24 A Yes.

25 Q I see there's a section there that begins --

1 **or there's a heading there, Facility Management**
2 **Contracts.**

3 **Do you see that?**

4 A Yes.

5 Q **Who would be responsible for this section?**

6 A Dave would draft it.

7 Q **And then who else would have input on it?**

8 A Members of the disclosure committee and
9 partnership development.

10 Q **Anybody else in particular that comes to**
11 **mind as having input on it?**

12 A No.

13 Q **And partnership development, which**
14 **individuals would that be?**

15 MR. WHITWORTH: Object to form.

16 BY MR. LYONS:

17 Q **Or individual?**

18 A I don't recall who in two -- 2011 it would
19 have been.

20 Q **And do you know who would provide**
21 **information to Mr. Garfinkle as he was drafting this**
22 **section? You know, for example, specific updates on**
23 **individual customers in that section, where would**
24 **that information come from?**

25 MR. WHITWORTH: Objection to form,

1 calls for speculation.

2 THE WITNESS: That would have come from
3 the partnership development area. Again, I don't
4 recall who -- who in 2011 would have had that
5 responsibility.

6 BY MR. LYONS:

7 Q But they would have provided information to
8 Mr. Garfinkle as he was drafting it, and then they
9 would have also reviewed the draft after it was
10 written and -- and in connection with the disclosure
11 committee meetings; is that right?

12 A That's correct.

13 Q Looking at, I think it's -- yeah, the last
14 sentence on that page, it says, We believe our
15 renewal rate on existing contracts remains high as a
16 result of a variety of reasons, including but not
17 limited to the constrained supply of available beds
18 within the U.S. correctional system, our ownership
19 of the majority of the beds we operate, and the
20 quality of our operations.

21 How were you defining renewal rate in that
22 sentence?

23 MR. WHITWORTH: Object to form.

24 THE WITNESS: As I recall, there was a
25 calculation we made based on the number of contracts

1 that renewed each year off the base.

2 BY MR. LYONS:

3 Q If a -- if a contract expires and there's a
4 rebid process, is it -- would you include that in
5 your calculation of the renewal rate?

6 A I believe so, yes.

7 Q And presumably there would also be -- for
8 example, if the contract hasn't expired but there
9 may be an option period, if the ex- -- if the
10 customer exercises the option, would that be
11 included as a renewal?

12 A I don't recall.

13 Q Who was responsible for -- for analyzing the
14 renewal --

15 MR. WHITWORTH: Object to form.

16 THE WITNESS: I believe that was -- it
17 would have been Dave or Patrick, Dave Garfinkle or
18 Patrick Swindle.

19 BY MR. LYONS:

20 Q Do you recall a time in 2012 that CCA was
21 expanding its -- some cost containment efforts?

22 MR. WHITWORTH: Object to form.

23 THE WITNESS: Can you be a little bit
24 more specific?

25

1 A Yes.

2 MR. LYONS: I suspect we've been going
3 about an hour, and I'm getting ready for another
4 document. So if you would like to take a break, we
5 can do that.

6 MR. WHITWORTH: Thank you.

7 THE WITNESS: Thank you.

8 THE VIDEOGRAPHER: Off the record at
9 11:51.

10 (Luncheon recess observed.)

11 THE VIDEOGRAPHER: Returning to the
12 record, the time is 12:35 p.m.

13 BY MR. LYONS:

14 Q So, Mr. Mullenger, just a couple more
15 questions going back to the disclosure committee
16 process we were talking about before.

17 I believe you said inside and outside
18 counsel were -- were involved in those meetings; is
19 that right?

20 A Yes.

21 Q What was their role?

22 A That --

23 MR. WHITWORTH: Objection to the form.

24 THE WITNESS: I believe -- I believe it
25 was inside counsel who acted as the -- headed --

1 headed the meeting, and then both would provide
2 input based on the topics that came up for
3 discussion.

4 BY MR. LYONS:

5 Q **And you mentioned both Bass Berry and**
6 **Latham & Watkins at different sometimes; is that**
7 **right?**

8 A Well, Bass, Berry & Sims was our outside
9 counsel, and then it transitioned, I forget when, to
10 Latham & Watkins.

11 Q **Yeah, that was going to be my question --**

12 A Yes.

13 Q **-- if you remembered when.**

14 A No.

15 Q **Not off the top of your head?**

16 A No.

17 Q **So what were the issues where inside and**
outside counsel would provide input?

19 MR. WHITWORTH: I caution you not to
20 reveal the content of the input, any legal advice
21 that they gave you.

22 THE WITNESS: Really any -- any issues
23 that were brought up around whether or not we should
24 be disclosing it.

25

1 BY MR. LYONS:

2 Q What did they tell you with respect to
3 whether -- how to determine whether facts should be
4 disclosed?

5 MR. WHITWORTH: Objection. Hold on.

6 That -- you're asking what legal advice
7 told them about what to disclose -- what legal
8 counsel told them?

9 MR. LYONS: Yes.

10 MR. WHITWORTH: So don't answer that.

11 It's a -- that's a privileged conversation.

12 BY MR. LYONS:

13 Q Are you going to follow your counsel's
14 instruction on that objection?

15 A Yes.

16 Q How did you determine whether facts should
17 be disclosed?

18 A In consultation with our legal counsel.

19 Q So -- so you relied on your counsel to -- to
20 make a decision about whether facts were material;
21 is that right?

22 MR. WHITWORTH: Object to the form.

23 THE WITNESS: Yes.

24 MR. LYONS: But, Mr. Whitworth, you're
25 not letting him testify as to what -- what they were

1 told in terms of how to make that determination?

2 MR. WHITWORTH: So your question is,
3 what did they tell you with respect to whether --
4 how to determine whether facts should be disclosed.

5 I'm not -- that's not the clearest
6 question, but my understanding is you're asking what
7 legal advice Bass Berry and Latham & Watkins gave
8 the disclosure committee.

9 And, no, he can't testify about what
10 legal advice they gave him. You know, he -- he can
11 testify about what -- what considerations the
12 disclosure committee had, who participated, who --
13 you know, what the topics were of the filings.

14 But I don't think he should testify
15 about legal advice from outside counsel or in-house
16 counsel.

17 And if you can ask a clearer question,
18 maybe it's something -- he can give you some answers
19 for that but not as for it is now.

20 MR. LYONS: We'll get to some more
21 specifics too.

22 BY MR. LYONS:

23 Q So can you tell what -- what the
24 considerations were that the disclosure committee
25 had when they decide -- were deciding whether a fact

1 **was material and should be disclosed?**

2 A Well, we rely on the advice of counsel in
3 terms of whether we should disclose it for FD
4 purposes.

5 **Q What do you mean by FD purposes?**

6 A Fair disclosure, is it required by the SEC.
7 Fair disclosure requirement.

8 **Q Anything other than the advice of counsel?**

9 A Not that I recall.

10 **Q As a financial professional, did you have
11 any perspective on what types of facts would be
12 material to investors?**

13 MR. WHITWORTH: Object to form.

14 THE WITNESS: Again, relied heavily on
15 inside and outside counsel on an areas there --
16 their area of expertise.

17 MR. LYONS: I'm going to mark this as
18 Exhibit 397.

19 (Marked Exhibit No. 397.)

20 BY MR. LYONS:

21 **Q And hand that to you.**

22 **Do you recognize this document,
23 Mr. Mullenger?**

24 A I do not.

25 **Q Who is Mr. Craddock -- Scott Craddock?**

1 I, the undersigned, a Licensed Court
2 Reporter of the State of Tennessee, do hereby
3 certify:

4 That the foregoing proceedings were
5 taken before me at the time and place herein set
6 forth; that any witnesses in the foregoing
7 proceedings, prior to testifying, were duly sworn;
8 that a record of the proceedings was made by me
9 using machine shorthand, which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is a true record of the testimony given.

12 Further, that if the foregoing pertains
13 to the original transcript of a deposition in a
14 federal case, before completion of the proceedings,
15 review of the transcript was requested.

16 I further certify I am neither
17 financially interested in the action nor a relative
18 or employee of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: March 25, 2020

22 
23

24 Elisabeth A. Miller Lorenz
25 RMR, CRR, LCR No. 66